

### **REMARKS**

The Examiner's Office Action of April 8, 2004 has been received and its contents reviewed. Applicants would like to thank the Examiner for the consideration given to the above-identified application.

Turning now to the detailed Office Action, the Examiner indicates that the Declaration filed November 24, 2003 failed to overcome the Fukushima references. Particularly, the Examiner deems that the evidence submitted is insufficient to establish due diligence from a date prior to the date of reduction to practice of the Fukushima references to either a constructive reduction to practice or an actual reduction to practice. Further, the Examiner requires that diligence must be shown between the dates of February 7, 1996 to May 14, 1996 and August 26, 1996 to December 3, 1996 in order to completely establish diligence and to disqualify the Fukushima references. In response to the Examiner's position that the Fukushima references qualify as prior art, Applicants respectfully submit additional evidence attached herewith, labeled as Exhibits A through I, and a Declaration to further support due diligence.

As stated in the Declaration, Exhibits A, B, C, D and E provide support for diligence between the above-mentioned date ranges of February 7, 1996 to May 14, 1996 and August 26, 1996 to December 3, 1996. Exhibits F, G, H and I, which do not fall within the date range are included to show other activities showing diligence leading to Applicants' filing date of December 3, 1996. The details of each of Exhibits A-I are discussed below.

With respect to Exhibits A through E, Exhibit A, which is dated April 2, 1996 and labeled as "LN Virgo Sample BA Scratch & Dig Test", is a test result of a lithium niobate piece scratch-and-dig test. As shown by the labeling, the test sample is from Virgo, and the "LN" abbreviation stands for lithium niobate. This test result shows that a sample of lithium niobate can be cut at the right angle and the right thickness to achieve the effects of the invention. Applicants respectfully assert that this document effectively shows evidence of reduction to practice. The Examiner is respectfully reminded that the preliminary documents up to the point of the Fukushima '420 filing, February 7, 1996, relate to finalizing the design

for the lithium niobate filter and requesting test samples cut on the proper angle and at the right thickness.

Exhibit B, dated April 8, 1996, is a memo from Dave Kessler discussing the sample from Virgo and commenting on lithium technologies.

Exhibit C, dated May 14, 1996, is a price quotation on lithium niobate from Crystal Technology, Inc. This document was submitted to the Examiner in the Declaration dated November 20, 2003. However, Applicants are resubmitting Exhibit C to show the continuity of activity following Exhibit B.

Exhibit D, dated August 30, 1996, is a technical paper by James E. Adams, Jr. discussing "optimum MTF of a digital camera anti-aliasing (or blur) filter."

Exhibit E, dated October 3, 1996, is a memo from David Kessler that discusses blur filters, more specifically, lithium niobate filters.

With respect to Exhibits F through I, which do not fall within the date ranges that require further support for diligence, Exhibit F, dated August 22, 1995, is a facsimile showing that the test results on April 2, 1995 samples tested were from Virgo Optics.

Exhibit G, dated May 17, 1996, is a quotation from V-A Optical Labs on lithium niobate plates.

Exhibit H, dated June 25, 1996, is a memo from Eastman Kodak Company discussing lithium niobate wafers.

Exhibit I, dated July 1, 1996, is a price quotation from Crystal Technology, Inc. on lithium niobate samples.

In view of Exhibits A through I described above, and in view of the facts and documentary evidence submitted in the Declaration of November 20, 2003, it can be seen that work was diligently on going from the date of conception, which has been established as August 3, 1995, to the date of December 3, 1996 when a patent application was first filed by Eastman Kodak Company.

As shown by the evidence provided in the Declaration filed concurrently herewith and in the Declaration of November 20, 2003, Applicants respectfully submit that there are periods during which Applicants were waiting on samples or quotations from some of the

vendors. Further, there were periods in which testing was being done, and there were time periods during which the large Kodak research organization was working on a number of products simultaneously. Taken as a whole, however, the body of documents submitted thus far clearly show reasonable diligence up to the time of the filing of the patent application.

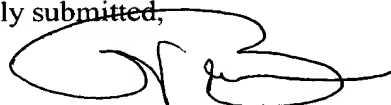
In view of the facts and documentary evidence discussed above, Applicants respectfully submit that due diligence has been established and that the Fukushima references are now disqualified as prior art references. Further, as the Fukushima references are now rendered as non-prior art references, their combination with Greivenkamp, Jr '193, Takatori et al. (U.S. Patent No. 5,715,085) and/or Watanabe et al. (U.S. Patent No. 3,784,734) in the 35 U.S.C. §103(a) rejections in the detailed Office Action is improper.

In the interest of keeping prosecution history compact, and as the arguments regarding the application of the Fukushima references have already been established in the prosecution history of this application, Applicants will not address each and every §103(a) rejection in which the Fukushima references are applied. At this juncture, Applicants respectfully request reconsideration and withdrawal of all pending §103(a) rejections because the Fukushima references are not prior art references, and without the Fukushima references a *prima facie* case of obviousness cannot be established in each and every §103(a) pending rejections.

Claim 13 stands rejected under 35 U.S.C. §112, second paragraph as indefinite. Specifically, the Examiner contends that the limitation "optical filter" in line 2 of claim 13 lacks proper antecedent basis. In response, Applicants respectfully submit that this rejection is improper and should be reconsidered and withdrawn for the reason that proper antecedent basis for the limitation is found in line 7 of claim 12. Specifically, claim 12 recites "an optical section having an optical filter made of a highly birefringent uniaxial crystal...", which provides proper antecedent basis for "said birefringent uniaxial crystal optical filter" in claim 13.

While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise which could be eliminated through discussions with Applicants' representative, then the Examiner is invited to contact the undersigned by telephone in order that the further prosecution of this application can thereby be expedited.

Respectfully submitted,



By: \_\_\_\_\_

Nelson A. Blish  
Registration No. 29,134

EASTMAN KODAK COMPANY  
Patent Legal Staff  
343 State Street  
Rochester, New York 14650-2201

Telephone: (585) 588-2720  
Facsimile: (585) 477-4646

NAB/JWM